

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4586 of 1998

with

SPECIAL CIVIL APPLICATION No 6594 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MULUBHAI K. DANGAR

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR HK RATHOD for the Respondent

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 11/09/98

ORAL JUDGEMENT

The first petition is filed by the State Transport Corporation against the respondent - bus driver who has filed the second petition. Both these petitions are concerning the impugned order of the learned Judge of the Labour Court dated 28.4.1997 whereby the reference filed by the workman, namely, Reference LCB No.650/93 was

allowed by the learned Presiding Officer of the Labour Court at Bhavnagar.

2. The facts leading to these cases are as follows:

The respondent - workman remained absent for a period of more than three years during 27.11.1988 to 29.1.1992 without affording any explanation. When he was served with a chargesheet, he did not send any reply nor did he remain present during the enquiry. In the Labour Court or, for that matter in this court also, no explanation is given for his absence. The learned Judge of the Labour Court accepted that the order of dismissal passed by the petitioner - management had a justification. The learned Judge also noted that, in the past also, the workman concerned had remained absent on some occasions. The learned Judge, however, relied upon the judgment of the single Judge of this court in the case of SARDARSINGH DEVISINGH v. DISTRICT SUPERINTENDENT OF POLICE reported in 1985 Gujarat Law Herald 940 wherein the punishment of removal from service on account of absence for 150 days was held to be disproportionate. The learned Judge, therefore, directed reinstatement with 50% backwages and with continuity of service. Special Civil Application No.4586 of 1998 is filed to challenge that award, whereas Special Civil Application No.6594 of 1998 is filed to enforce the award.

3. RULE on both these petitions. Both of them are made returnable forthwith. The learned Counsel who appears for the petitioners in both these matters appears for the respondents in the petition by the other side. They waive service of Rules. Both of them have made their submissions.

4. In the facts as narrated above, when the absence of more than three years was not explained by the workman concerned, the learned Judge could not have drawn support on the basis of the aforesaid judgment of the single Judge where the absence was only for 150 days. The learned Judge was, therefore, certainly not right in awarding 50% backwages and continuity of service. Since the workman concerned is a bus driver and since there are no instances of accident at his hands, the respondent workman was permitted to rejoin. The S.T. Corporation needs drivers with experience. But, at the same time, that cannot be at the cost of public exchequer. Hence, the order passed by the learned Judge will be substituted by a direction that the workman concerned will be permitted to rejoin without any continuity and without any backwages. He will be at liberty to withdraw his gratuity and other benefits for whatever years of service

that he had put in earlier, and he will be treated as a fresh employee for the purpose of service from the date of the award. The fact, however, remains that he had put in about 19 years of service earlier. Hence, his service will be taken into consideration while fixing his pay. He will also be given the benefit of whatever settlements that are entered into so that his last pay will be protected. The impugned award is substituted by the aforesaid terms.

5. Rule issued in Special Civil Application No.4586 of 1998 is made absolute to the above extent. Rule in Special Civil Application No.6594 of 1998 is discharged.

The Corporation will reinstate the workman from the first working day of October 1998. The arrears of wages from the date of the award will be paid to the workman along with his salary of October 1998.

(KMG Thilake)

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